

CONTRACT #7
RFS # 332.42-03-07
UT Tracking No. 84897

University of Tennessee
Knoxville Athletics

VENDOR:
Paciolan, Inc.



THE UNIVERSITY of TENNESSEE

Vice President for Administration and Finance

711 Andy Holt Tower
Knoxville, TN 37996-0174
Phone: (865) 974-2243
Fax: (865) 974-1324

January 3, 2007

RECEIVED

JAN 03 2007

FISCAL REVIEW

Mr. Jim White
Executive Director
Fiscal Review Committee
320 Sixth Avenue, North – 8th Floor
Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract amendment with Paciolan, Inc. for its hosting services of PACMail, an email module to the University's athletic ticketing system.

Paciolan is an integrated ticketing, marketing, and development system used by the Knoxville Athletics Department for management of its venues and customer base. This amendment adds hosting services for the e-mail module which allows for online promotion of ticket renewals and subscriptions. The university has consistently used this ticketing system since FY 1996. The attached contractual documents do not include expenditures for FY 1997 and FY 1998 as the original contract had automatic renewals upon payment of the annual maintenance fees at \$19,293 per year.

This amendment is before the committee for review because the maximum contractual period is over one year with a cumulative cost of \$495,972.60. The effective date of this amendment is January 1, 2007. I apologize to the committee for this amendment not meeting the sixty-day requirement. The university was already receiving ongoing support from the vendor covered in prior agreements and needed to implement newly acquired solutions at an opportunistic time so as not to disrupt ticketing processes.

If you have questions or need additional information, please let me know.

Respectfully,

Sylvia Shannon Davis
Vice President for Administration and Finance

c: Dr. John D. Petersen
Dr. Jack Britt
Mr. Mike Hamilton
Mr. Anthony Haynes
Mr. Bill Myers

CONTRACT SUMMARY SHEET						021406
RFS #		Contract #				
332.42-03-07		N/A				
State Agency		State Agency Division				
University of Tennessee		Knoxville Athletics				
Contractor Name		Contractor ID # (FEIN or SSN)				
Pacolan, Inc.		C- or <input checked="" type="checkbox"/> V-				
Service Description						
Software hosting services for athletics ticketing system.						
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #
7/15/1995		6/30/2007		Vendor		N/A
Mark Each TRUE Statement						
<input type="checkbox"/> N/A Contractor is on STARS		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts				
Allotment Code		Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
332.42		N/A	N/A	N/A	N/A	N/A
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount	
1996				\$ 19,293.60	\$ 19,293.60	
1999				\$ 20,724.00	\$ 40,017.60	
2000				\$ 94,394.00	\$ 134,411.60	
2001				\$ 27,780.00	\$ 162,191.60	
2002				\$ 35,836.00	\$ 198,027.60	
2003				\$ 41,745.00	\$ 239,772.60	
2004 - 2007				\$ 250,200.00	\$ 489,972.60	
TOTAL: \$ -		\$ -	\$ -	\$ 489,972.60	\$ 489,972.60	
— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #			
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Sylvia Davis, 865-974-2243			
1996	\$ 19,293.60		State Agency Budget Officer Approval			
1999	\$ 20,724.00		Sylvia Shannon Davis, VP Administration and Finance			
2000	\$ 94,394.00					
2001	\$ 27,780.00					
2002	\$ 35,836.00					
2003	\$ 41,745.00		Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)			
2007	\$ 243,000.00	\$ 7,200.00				
TOTAL:	\$ 482,772.60	\$ 7,200.00				
End Date	June 30, 2007	June 30, 2007				
Contractor Ownership (complete only for base contracts with contract # prefix FA or GR) N/A						
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT disadvantaged		
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—			
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)						
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method				
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other				
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)						
Pacolan is the industry leader in ticketing software and is consistent and compatible with past acquisitions.						

**THE UNIVERSITY OF TENNESSEE
REQUEST: NON-COMPETITIVE AMENDMENT**

APPROVED:

UT System Office Approval

Date

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) UT Tracking Number:	332.42		
2) Campus/Institute Name:	The University of Tennessee		
EXISTING CONTRACT INFORMATION			
3) Short Description:	Software hosting services for athletics ticketing system.		
4) Proposed Vendor:	Name:	Paciolan, Inc.	
	Vendor Number:		
	Vendor ID:	95-3518417	
5) Contract #	84897		
6) Contract Start Date:		July 1, 1995 - original agreement January 1, 2004 - hosting services agreement	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	June 30, 2007		
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$489,972.60 (all agreements)		
PROPOSED AMENDMENT INFORMATION			
9) <u>Proposed</u> Amendment #	First amendment to hosting services agreement effective 1/1/2004.		
10) <u>Proposed</u> Amendment Effective Date:	January 1, 2007		
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	software hosting - infinite		
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	N/A		
13) Approval Criteria: (select one)	<input type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the university	
	<input checked="" type="checkbox"/>	only one uniquely qualified service provider able to provide the service	

14) Description of the Proposed Amendment Effects & Any Additional Service	
Adds hosting services to PACMail, a proprietary module of the Paciolan ticketing system.	
15) Explanation of Need for the Proposed Amendment:	
Amendment is needed to add hosting services for e-mail module to the Paciolan ticketing software. Beginning January 2004, the university began hosting the ticketing system directly with Paciolan. This results in a savings to the university by not having to maintain the equipment and obtain necessary personnel support.	
16) Name & Address of Vendor/Contractor's Current Principal Owner(s): (not required if proposed contractor is a state education institution)	
Paciolan, Inc 17305 Von Karman Irvine, CA 92614	
17) Documentation of Office for Information Resources Endorsement: N/A (required <u>only</u> if the subject service involves information technology)	
18) Documentation of Department of Personnel Endorsement: N/A (required <u>only</u> if the subject service involves training for state employees)	
19) Documentation of State Architect Endorsement: N/A (required <u>only</u> if the subject service involves construction or real property related services)	
20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :	
Paciolan is the industry leader in Athletics ticketing software and UT has utilized the system since 1995. The original contract was for the base software and support. Subsequent contracts and amendments for the proprietary products have been sole-sourced with the same vendor to keep compatibility and consistency. Switching to another vendor and product would require new training, revamping online ticketing portal, and a change in many backend processes and procedures.	
21) Justification for the Proposed Non-Competitive Amendment :	
Original contract (35236) was signed in FY 1995 for software and support services. Additional licensing, renewals, and support were purchased with contracts 55426, 58912, 59713, 64357, 70470, 73448, 63467, and 84897. The last contract signed (84897) added hosting services which allowed the university to discontinue internal IT services and support and equipment purchases with related upgrades. This amendment adds the hosting of the e-mail module to the hosting plan. This is a proprietary software package only available from Paciolan, Inc.	

**AMENDMENT
TO
SYSTEM PURCHASE CONTRACT**

This Amendment ("Amendment") to that certain System Purchase Contract dated July 15, 1999, as amended and supplemented from time to time (collectively, the "Original Agreement") is entered into effective as of _____, 2006 ("Amendment Effective Date") by and between Paciolan, Inc. ("Paciolan") and the University of Tennessee ("Customer").

Background

Paciolan and Customer now desire to further amend and supplement the Original Agreement as specified below in order to provide Customer with additional software and services.

In consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree to amend the Original Agreement as follows.

Original Agreement Amendments

1. **PACMail Addendum.** There is hereby added to the Original Agreement the additional provisions set forth on the PACMail Addendum attached hereto as **Exhibit A.**

2. **Supplemental Investment Addendum.** There is hereby added to the Investment Addenda to the Original Agreement, the Supplemental Investment Addendum attached hereto as **Exhibit B.** The Supplemental Investment Addendum supplements the Investment Addenda to the Original Agreement. The Supplemental Investment Addendum contains the listing of new software and services being provided to Customer under this Amendment and the fees applicable thereto. Customer shall pay to Paciolan the costs and fees set forth in the Supplemental Investment Addendum in accordance with and by the due dates as set forth therein.

All exhibits attached hereto are incorporated herein by reference. Except as amended by this Amendment, all other terms and conditions set forth in the Original Agreement shall remain in full force and effect. If there is any conflict between the terms of this Amendment and the Original Agreement, then the terms of this Amendment shall prevail. Any defined terms that are not defined hereunder shall have the meanings set forth in the Original Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and do each hereby represent that their respective signatory whose signature appears below has been and is on the Amendment Effective Date duly authorized by all necessary and appropriate corporate action to execute this Amendment.

PACIOLAN, INC.

UNIVERSITY OF TENNESSEE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

PACMAIL ADDENDUM

This Exhibit A sets forth additional terms and conditions applicable to the license granted to the PACMAIL component of the Paciolan Software.

1. Delivery of Licensed Services; Licenses.

(A) Delivery. Paciolan licenses proprietary technologies and processes to provide Customer with the "Licensed Services", which include: (i) an Internet-based, email marketing solution that allows Customer to send targeted, personalized email promotional messages to fans, patrons and visitors; (ii) dynamic registration interface which includes a landing page with customizable text and graphics and a registration page with customizable newsletter sign up, topics and demographic questions; (iii) a database that will collect the registration information and includes reporting on the data stored in the database; and (iv) outbound e-mail transmission to selected segments of the database with basic functionality including text and HTML formatting, click tracking and advanced scheduling. The Licensed Services will be accessible to Customer through an Internet site hosted by Paciolan at a URL to be designated by Paciolan from time to time (collectively, the "Site"). As part of a private label offering for Customer employing the Licensed Services, Paciolan shall, at its sole cost and expense, among other matters to be undertaken, brand the graphical user interface to the Site with the Customer logo and trademarks and service marks, so that the Site and any other products or services visible to Customer clients shall have the "look and feel" of Customer. Paciolan may subcontract any portion of the Site contemplated hereunder, provided that Paciolan shall be responsible for the conduct and performance of each subcontractor as if Paciolan had performed all of the subcontracted services. To the extent that any third party advertising revenues are generated from the Licensed Services, Paciolan shall receive such revenues.

(B) Ownership; No Implied Licenses The Intellectual Property Rights in the "look and feel" of the Site shall be owned by Customer; provided, however, that all of the Intellectual Property Rights in the underlying software utilized in connection with the Site, including, without

limitation, the PACMail component of the Software, shall be owned exclusively by Paciolan. All Intellectual Property Rights in the Customer Marks (as defined below), shall be owned exclusively by Customer (it being understood that Paciolan shall have the right and license to utilize and display such Customer Mark to the extent necessary to include such names, logos and other Customer content on the Site. "Intellectual Property Rights" means worldwide rights associated with (i) inventions, including patents, patent applications and statutory invention registrations or certificates of invention, (ii) trademarks, service marks, domain names, trade dress, logos, and other brand or source distinctions, including related registrations and applications for registration, (iii) works of authorship, including copyright registrations, applications therefore, and moral rights, (iv) trade secrets and know-how, (v) divisions, continuations, renewals and re-issuances of the foregoing now existing or acquired in the future, and (vi) other intellectual property rights of any type throughout the world. Except as provided with respect to Customer License in Section 1(d), nothing set forth in this PACMail Addendum shall be deemed to grant or imply any license to the Site.

(C) Customer Marks. All proposed uses by Paciolan of the Customer trademarks, trade names, logos and other brand marks (collectively the "Customer Marks") are subject to Customer's prior written approval. Paciolan specifically acknowledges that the Customer Marks and all rights therein belong exclusively to Customer. Each page of the Site shall include an attribution to Paciolan. The attribution shall state that "Powered by Paciolan". Paciolan reserves the right to modify this attribution from time to time during the term of this PACMail Addendum and update the attribution and on the Site.

(D) Customer License. Paciolan hereby grant to Customer a non-exclusive, non-transferable

license (the "Customer License"), for the Term, to: (i) access and use the Site and to conduct and use the Site for Customer's internal business purposes, and (ii) to market and offer to Customer's clients the use of the Site.

(E) License Restrictions. The Customer License shall be subject to the following restrictions: (i) Customer shall access and use the Site only for the intended uses and purposes for which the Site is designed; (ii) Customer shall not knowingly permit any person, other than its authorized employees, agents or contractors who have been assigned passwords by its system administrator, to access the Site; (iii) Customer shall not have any access to the source code to the Site and shall not reverse engineer, reverse assemble, decompile or otherwise derive source code from the Site; (iv) the Customer shall not remove, modify or obscure any copyright, trademark, patent and other proprietary notices that appear on the Site, or during the use of such solution; and (v) except as set forth herein, the Customer shall not rent, lease or lend the Site to any third party.

2. Hosting and Maintenance Services.

(A) Hosting Services Provided. During the Term, Paciolan, at its sole cost and expense, shall operate, manage and maintain the Site by providing the following services (the "Hosting Services"):

(i) Service Availability. Paciolan will use commercially reasonable efforts to ensure that the Site is available over the Internet and by modem connection at least 99% of the time during any 30-day period, excluding downtime due to routine software or hardware maintenance, provided that Customer is notified of such maintenance at least seventy-two (72) hours in advance and, unless Customer otherwise agrees in writing in advance, such maintenance does not exceed four (4) hours during any calendar month. This guarantee does not include Customer requested maintenance in addition to scheduled maintenance, downtime resulting from Customer requested enhancements or upgrades, or Force Majeure.

(ii) Scheduled Downtime. Periodically it is necessary to perform system maintenance which requires that the Site not be accessible for registration or administration. These scheduled maintenance periods are generally during the

hours of 12:00 A.M. to 4:00 A.M. local time. The period between these two times will be deemed as scheduled downtime for the purpose of this PACMail Addendum.

(iii) Security. Paciolan will use commercially reasonable efforts to prevent unauthorized access to restricted areas of its servers and any databases or other material generated from or used in conjunction with the Site.

(iv) Integrity of Site. Except as set forth hereunder, Paciolan shall not make any alterations to the Site without the prior approval of Customer, other than alterations required for technical site functionalities. Customer will provide all graphics and source code for the registration interface. Additionally, the Customer may request, no more than once per year, a change of this registration interface.

(B) Management Services. During the Term, Paciolan, at its sole cost and expense, shall provide, in addition to the customer support services it will be providing as part of its support services, the following services (collectively, the "Management Services") in respect of the Site:

(i) Data Storage. Store the information of the holders (and their authorized users) of each Customer License on third party services and in accordance with specified procedures. Paciolan shall use such information solely for the purposes contemplated in this PACMail Addendum and otherwise in compliance with all applicable state and federal laws of the United States.

(ii) Training. Paciolan, or its Designated Service Provider, will provide up to three (3) hours of Customer training in the operation of the Licensed Services, which training shall be provided telephonically.

(iii) Updates. During the Term, Customer will periodically receive, if and when available, enhanced versions of the Site as they are generally made available to other Paciolan customers.

3. Customer Responsibilities. During the Term, Customer agrees to:

(A) Update Customer's corporate web site with marketing information regarding the Site;

(B) Establish a client login button on Customer's corporate web site that will transport the client to the Site;

(C) Not permit any service competitive with the Site to originate from or be accessed by the Customer's Web site;

(D) Not use the Software or services provided hereunder to promote the offerings of any third party ticketing solutions provider; and

(E) Further ensure that its privacy policy, as may be amended from time to time, complies with all applicable state and federal laws, rules and regulations. Customer shall publish its standard

privacy policy in a prominent location on the Site for viewing by customers and shall provide adequate notice, disclosure and choice to customers regarding its collection, use and disclosure of customer information.

3. **Term.** The term of this PACMail Addendum shall begin on the Amendment Effective Date and continue until termination of the Original Agreement.

Exhibit B
Supplemental Investment Addendum

PACMail INVESTMENT SUMMARY				
Qty	Description	Unit Price	Ext Price	QSHF
PROFESSIONAL SERVICES				
1	Implementation Fee	\$2,400	\$2,400	
1	Implementation Fee Discount	-\$1,200	-\$1,200	
SOFTWARE				
1	PACMAIL Software Hosting Fee*			\$3,000
QSHF- Quarterly Software Hosting Fee				
* Payable quarterly in advance.				

FEES AND PAYMENT TERMS

FEES	
IMPLEMENTATION FEE	\$1,200
QUARTERLY SOFTWARE HOSTING FEE (The Hosting Fee will be waived for the months of November and December	\$3,000 *
PAYMENT TERMS	
DUE ON the Amendment Effective Date (Implementation Fee)	<u>\$1,200</u>
DUE ON January 1, 2007 and Quarterly in advance thereafter	<u>\$3,000</u>

* Paciolan reserves the right to increase the PACMail Quarterly Service Charge by up to 5% per annum, subject to sixty (60) days prior written notice to Customer.

Note: The QSHF shall be reduced on a pro-rata basis for services provided for a partial portion of a calendar quarter.